

Notice of Allowability

Application No.

10/768,342

Examiner

David H Kruse

Applicant(s)

HICKS, JOHN D.

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Examiner Initiated Interview of 5 November 2004.
2. ☒ The allowed claim(s) is/are 1-8.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☒ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 04/30/2004
4. ☒ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date SAME
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR § 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Steven Callistein on 5 November 2004.

The application has been amended as follows:

The Abstract has been amended as follows;

According to the invention, there is provided a novel soybean variety, designated XB55K04. This invention thus relates to the seeds of soybean variety XB55K04, to the plants of soybean XB55K04, to plant pads of soybean variety X855K04 and to methods for producing a soybean plant produced by crossing soybean variety XB55K04 with another soybean plant, using XB55K04 as either the male or the female parent. This invention also relates to methods for introgressing a transgenic or mutant trait into soybean variety XB55K04[and to the soybean plants and plant pads produced by those methods]. [This invention also relates to soybean varieties or breeding varieties and plant parts derived from soybean variety XB55K04, to methods for producing other soybean varieties or plant parts derived from soybean variety XB55K04 and to the soybean plants, varieties, and their parts derived from use of those methods.] This invention further relates to soybean seeds, plants, and plant parts produced by crossing the soybean variety X855K04 with another soybean variety.

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At claim 1, "Seed" has been amended to -- A seed --.

At claim 5, -- produced -- has been inserted after "cells".

Claim 6 (Amended) [A] The tissue culture according to claim 5, wherein the cells or protoplasts [of the tissue culture] are [obtained] produced from a plant tissue selected from the group consisting of[:] leaf, pollen, cotyledon, hypocotyl, embryos, root, pod, flower, shoot and stem.

At claim 7, line 1, "and" has been deleted from the claim.

At claim 8, line 1, ":" has been deleted from the claim.

2. In an Examiner initiated interview with Applicant's representative Steven Callistein on 5 November 2004, Mr. Callistein approved the above amendments to the Abstract and Claims to put the application in condition for allowance. The amendments have been made as a matter of form only.

3. The following is an examiner's statement of reasons for allowance: The closest prior art are Tinlus, U.S. Patent 5,684,229 and Luzzi, U.S. Patent 6,087,562.

The '229 patent discloses soybean cultivar 91112039947 which is a roundup ready soybean cultivar having an imperfect black hilum, purple flower, gray plant pubescence color and tan pod color. Soybean cultivar 91112039947 differs from the instant invention in that the prior art cultivar has medium green leaf color and is moderately susceptible to Frogeye Leaf Spot (see column 5), while the soybean cultivar of the instant invention has a dark green leaf color and moderate resistance to Frogeye Leaf Spot (see pages 13 and 14 of the specification).

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The '562 patent discloses soybean cultivar 9524879614838 which is a roundup ready soybean cultivar having an imperfect black hilum, purple flower, gray plant pubescence color and tan pod color. Soybean cultivar 616159456 differs from the instant invention in that the prior art cultivar is not disclosed as having sulfonylurea herbicide resistance, while the soybean cultivar of the instant invention has sulfonylurea herbicide resistance.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

REQUIREMENT OF ALLOWANCE UNDER 37 CFR §§ 1.801-1.809

4. The Deposit Statement on page 48 of the specification is deemed in accordance with 37 CFR §§ 1.801-1.809. Since the application is otherwise in condition for allowance except for the needed deposit of seed, and since the Office has received written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office is authorized to mail Applicant a Notice of Allowance and Issue Fee Due together with a requirement that the needed deposit be made within THREE (3) MONTHS of the mail date of this letter (see 37 CFR § 1.809(c)).


As set forth in 37 CFR § 1.809(c), Applicant is required to deposit 2500 seeds of the claimed plant within THREE (3) MONTHS of the mail date of this letter; thus the time for making the deposit is on or before the payment of the issue fee.

Applicant is reminded that once the deposit of seed has been made, information regarding the date of deposit, description of the deposited material including number of seeds deposited, name and address of the depository, and the accession number must be added to the specification in order to comply with 37 CFR § 1.809(d). In addition, the claims must be amended to replace the blank "_____" with the appropriate Accession Number. Amendments to the specification and the claims must be filed under 37 CFR § 1.312.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H. Kruse, Ph.D. whose telephone number is (571) 272-0799. The examiner can normally be reached on Monday to Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Amy Nelson can be reached at (571) 272-0804. The fax telephone number for this Group is (703) 872-9306 Before Final or (703) 872-9307 After Final.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (571) 272-0547.

DAVID H. KRUSE, PH.D.
PATENT EXAMINER


David H. Kruse, Ph.D.
8 November 2004

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6. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.